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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,423	07/10/2001	Michael A. Lloyd	24717-707	8239

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WILSON SONSINI GOODRICH & ROSATI
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PALO ALTO, CA 943041050

EXAMINER

NGUYEN, PHUOC H

ART UNIT PAPER NUMBER

2143

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/903,423

Applicant(s)

LLOYD ET AL.

Examiner

Phuoc H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on July 10, 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/4/01, 9/18/01, 5/29/03, 3/19/03, 1/2/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-6,9-12, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Case et al. (Hereafter, Case) U.S. Patent 6,601,098.

3. Regarding claims 1 and 17, Case discloses a method of measuring a performance of a route in an internetwork, the route coupling an internetwork server to a terminal on the internetwork (Figure 4), the method comprising: at a frequently trafficked portal on the internetwork, detecting a request for a web page from the terminal, wherein the web page is at least partially stored at the frequently trafficked portal (Figure 3b; and col. 7, lines 4-8); in response to the request for the web page, downloading the web page to the terminal via the internetwork (col. 7, lines 8-14); from the web page, retrieving a Uniform Resource Locator (URL) for a web object (eg. different special URL) referenced in the web page (col. 7, lines 14-16); resolving the URL to the internetwork server, detecting a request for the web object from the terminal at the internetwork server (col. 7, lines 17-20); in response to the request for the web object, sending the web object from the internetwork server to the terminal (col. 7, lines 20-25);

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and concurrent with sending the web object, measuring a Round Trip Time (RTT) of one or more packets sent between the internetwork server and the terminal (col. 8, lines 28-33).

4. Regarding claims 2-3, Case further discloses the web page is at least partially encoded in a markup language and markup language is the Hyper Text Markup Language (inherently, HTML defines the structure and layout of a web document (eg. web page)) (Figures 3B and 4).

5. Regarding claims 4 and 5, Case further discloses the sending the web object from the internetwork server to the terminal is performed via a Hyper Text Transfer Protocol (HTTP) and the Hyper Text Transfer Protocol is HTTP v 1.0 (col. 6, lines 35-48).

6. Regarding claims 6, Case further discloses the Hyper Text Transfer Protocol is HTTP v 1.1 (col. 7, lines 4).

7. Regarding claim 9, Case's figure 3B discloses a packet sent from the first point (eg. client) to the second point (eg. server) (col. 7, lines 4-8); and a packet received at the second point from the first point, wherein the received packet comprises a response to the sent packet (eg. server response; col. 7, lines 8-14); measuring a plurality of durations between the sent packets and the received packets for the one or more pairs (Figure 4, route trip time (RTT)); and calculating, at least from the plurality of durations, parameters of at least part of the network, wherein the parameters comprise per-group delay, jitter, and loss (eg. RTT, Figure 4; Abstract; col. 9, 2nd paragraph).

8. Regarding claim 10, Case further discloses the pairs of packets comprise messages in Transmission Control Protocol (TCP) format (col. 6, lines 3-7).

9. Regarding claims 10 and 11, Case further discloses one or more of the sent packets is a SYN/ACK packet and the received packets is an ACK packet (Case inherently teaches packet

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sent and receive are implemented in the Transmission Control Protocol and due to TCP is a reliable protocol which guarantees delivery of data and also guarantees that packets will be delivered in the same order in which they were sent. Therefore, the communication between the client and web server are ACK each others when the packet is receive or send).

10. Regarding claim 12, Case further discloses the network is an internetwork (Figure 3B).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 7 and 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Case in view of Shaffer et al. (Hereafter, Shaffer) U.S. Patent 6,748,426.

Case discloses detecting a request for the web object from the terminal at the internetwork server; however, Case fail to teach web object is visually imperceptible, and a single pixel.

Shaffer discloses web object is visually imperceptible, and the web object is a single pixel (col. 16, lines 29-31).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Shaffer's teaching into Case's method to establish the web object as small as a single pixel that is virtually undetectable on the terminal displayed page to

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reduce the size of the web object and the time it will take for this file to be transmitted to the client.

13. Claims 13-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Case in view of Ronen U.S. Patent 6,026,441.

14. Regarding claim 13 is substantially the same as claim 1 and is thus rejected for reasons similar to those in rejecting claim 1. However, Case fails to teach a Domain Name System (DNS) server on the internetwork, and the DNS server including a reference which maps the URL for the web object to an Internet Protocol address for an internetwork on the internetwork.

Ronen teaches a Domain Name System (DNS) server on the internetwork, and the DNS server including a reference which maps the URL for the web object to an Internet Protocol address for an internetwork on the internetwork (col. 3, lines 26-42).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Ronen's teaching into Case's method to add the DNS server to the internetwork to obtain the IP address associated with the Internet name (URL) and establishes a connection with the Web server at that IP address in order to receive that server's web page.

15. Regarding claims 15 and 16 list all the same elements of claims 2 and 3, but in system form rather than method form. Therefore, the supporting rationale of the rejection to claims 2 and 3 applies equally as well to claims 15 and 16.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Schwaller et al. U.S. Patent 6,625,648 disclose a methods, systems and computer products for network performance testing through active endpoint pair based testing and passive application monitoring.

Vaid et al. U.S. Patent 6,119,235 disclose a method and apparatus for quality of service management.

Griffiths et al. U.S. Patent 6,286,045 disclose an information storage and delivery over a computer network using centralized intelligence to monitor and control the information being delivered.

Vaid et al. U.S. Patent 6,341,309 disclose a firewall system for quality of service management.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919. The examiner can normally be reached on Mon -Thu (7AM-4: 30PM) and off every other Friday.

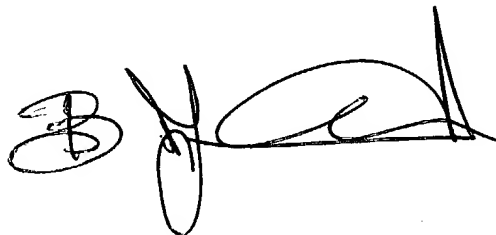
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on 703-308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuoc H. Nguyen
Examiner
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November 3, 2004

A handwritten signature in black ink, appearing to read 'Bunjob Jaroenchonwanit', with a stylized, elongated flourish extending to the right.

**BUNJOB JAROENCHONWANIT
PRIMARY EXAMINER**